HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25220 OF 2007

Dated:28.11.2007

Between:

1. P. Ganesh and others.

..Petitioners

And

1. The Deputy Commercial Tax Officer,
   Jogipet, Medak, Medak District, A.P.
   and others.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
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WRIT PETITION No:25220 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the action of the 1st respondent in attaching the ancestral joint family property of the petitioners viz., H.No.2-43, Shivampet Village, Shivampet Mandal, Medak District, A.P., as illegal and consequently, to set aside the notice of attachment in form No.5 issued under section 27 of the Revenue Recovery Act, 1864, dated 16.11.2007 issued by the 1st respondent.

The main grievance of the petitioner is that against the assessment order passed by the 2nd respondent against M/s. Peddagiri Ramaiah Traders, an appeal has been preferred before the Sales Tax Appellate Tribunal. While so, the respondents issued impugned notice attaching the joint family property of the petitioners and that originally, late Peddagiri Rajeshwar, who was the son of the 4th petitioner and elder brother of the 1st and 3rd petitioners did business in Oil etc., under the name and style of M/s Peddagiri Ramaiah traders and the said business was his own proprietary concern and the petitioners are in no way concerned with the same. Hence, the present writ petition is filed by the petitioners.

Heard the learned Counsel appearing for the petitioners and the learned Government Pleader for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioners that the property under attachment is not the property of the Ramaiah traders or its late proprietor P. Rajeshswar, but it is the joint family property of the petitioners and since the proprietor had died unmarried before effecting partition of the property, his share got extinguished and therefore, the impugned notice of attachment is liable to be set aside.

Before going into the merits of the case, it is pertinent to note that there is no dispute as to the business of the deceased assessee. Therefore, there cannot be any dispute as to the assessment in question.

According to the petitioners, the property against which the attachment notice has been issued, pertains to the joint family property and apart from that, on the death of the assessee, his share in the alleged joint family property also becomes extinguished and therefore, the attachment notice cannot be issued against the joint family property.

At this stage of proceedings, it is relevant to note that the scope of the writ petition under Article 226 of the Constitution of India is very limited whereunder the claim of the petitioners that the property in question pertains to the joint family so that the attachment notice

cannot be issued against the alleged joint family property, cannot be entertained for the reason that with regard to the grievance as to the civil rights, a separate forum is available.

In this back ground of the matter and in the peculiar facts and circumstances of the case, We have no hesitation to hold that this writ petition is not maintainable and the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. No costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 28th November, 2007
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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
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HONOURABLE MS JUSTICE G. ROHINI

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(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

28/11/2007